

January 20, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

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Mr. David L. Hay
Dallas County Community College District
Office of the Chancellor
710 Elm Street, Suite 700
Dallas, Texas 775202-2053

OR99 0139

Dear Mr. Hay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121947.

The Dallas County Community College District (the "district") received a request for information concerning an individual employed as a campus police officer. Although the request is from another governmental entity, it is our understanding that you are not treating this as an intergovernmental transfer of information but rather as a request from the public. The requestor seeks the employee's personnel file and other information, including complaints, involving the employee. The requestor revised her request to exclude all benefit information, tax information, and medical information. You submit to this office a representative sample of the requested information marked as Exhibits 1 through 9¹. We need not address the information contained on Exhibit 1 and the top half of Exhibit 2 because it is not responsive to the amended request. You assert that portions of the requested

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit a representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information are exempt from disclosure under sections 552.101, 552.117 and 552.130. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You argue that portions of the submitted documents must be withheld under a variety of statutory provisions.

The bottom half of Exhibit 2 consists of information that you contend that the district must withhold because it is information obtained from the National Crime Information Center ("NCIC"). The dissemination of criminal history record information ("CHRI") obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 at 10-12 (1990). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. We, therefore, agree that the district must withhold the bottom half of the page marked Exhibit 2 pursuant to section 552.101 of the Government Code.

Exhibit 4 consists of a record of the evaluation of a patient created by a mental health professional. Section 611.002 of the Health and Safety Code, which pertains specifically to mental health patients, makes confidential "[c]ommunications between a patient and a professional, [and] records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional." *See also* Health and Safety Code § 611.001 (defining "patient" and "professional"). The information contained on Exhibit 4 may not be released except in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. Health and Safety Code § 611.002(b); *see id.* §§ 611.004, 611.0045.

You assert that some of the information on Exhibits 6, 8, and 9 is excepted from disclosure pursuant to section 552.117 of the Government Code. Section 552.117(2) provides for the confidentiality of the home addresses, home telephone numbers, and social security numbers of peace officers, as well as information that reveals whether the peace officer has family members. The protection of section 552.117 is automatic for peace officers and extends to former home addresses and telephone numbers of peace officers. Open Records Decision No. 622 at 6 (1994). Pursuant to section 552.117, a peace officer's social security number is explicitly excepted from disclosure. Release of the number renders it public, therefore, you must withhold the social security number of the subject of the request, despite the requestor's possession of it. We have supplemented your markings of the information submitted to this office to protect additional information that is excepted from disclosure under section 552.117 on Exhibits 5, 6, 7, 8, 9 and on page 2 of Exhibit 2, which appears to have been intended as Exhibit 3.

You assert that section 552.130 of the Government Code applies to exempt from disclosure item 9 of Exhibit 5. Section 552.130, governing the release and use of information obtained from motor vehicle records, provides in relevant part as follows:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

* * * *

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

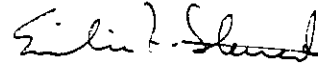
Gov't Code § 552.130. You have correctly marked the information that you must withhold pursuant to section 552.130.

Finally, we note that among the documents you seek to withhold is a single page containing fingerprints. It is page 2 of the documents marked Exhibit 2, but, apparently, was intended to be marked Exhibit 3. You assert that Exhibit 3 is protected from disclosure by Open Record Decision No. 127 (1976). Open Record Decision No. 127 summarizes the decision in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.-Houston [14th Dist.] 1975, *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), which upheld and applied the statutory predecessor to section 552.108 to protect records of law enforcement agencies. You have not explained how Open Records Decision No. 127 applies to the page of fingerprints that you submitted and it is not self-evident. Open Records Decision No. 127 lists, as information not available to the public, fingerprint comparisons that are part of an offense report. There is no indication that the submitted fingerprints are part of an offense report. Because you have raised no other exception to disclosure, we conclude that the district must release the page of fingerprints to the requestor.

In summary, Exhibit 1 and the top half of page 1 of Exhibit 2 are not responsive to the amended request and are not addressed in this ruling. You must withhold from disclosure the bottom half of the first page of Exhibit 2 and Exhibit 4. You must redact from page 2 of Exhibit 2, which appears to have been intended as Exhibit 3, and redact from Exhibits 5, 6, 7, 8, and 9 information that is protected from disclosure under section 552.117 of the Government Code. You must also redact item 9 of Exhibit 5 under section 552.130 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\nc

Ref: ID# 121947

Enclosures: Submitted documents

cc: Ms. Janie Gonzalez
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(w/o enclosures)